

**MODEL REGULATION TO DEFINE STANDARDS AND COMMISSIONER’S AUTHORITY
FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION**

Table of Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Standards
Section 4.	Commissioner’s Authority
Section 5.	Judicial Review
Section 6.	Separability
Section 7.	Effective Date

Section 1. Authority

This regulation is adopted and promulgated by [title of supervisory authority] pursuant to Section [insert reference to section authorizing the commissioner to adopt regulations and a reference to the state equivalent of the NAIC Insurer’s Rehabilitation and Liquidation Model Act and any other section where the term hazardous financial condition or a similar term is used] of the [insert state] Insurance Code.

Section 2. Purpose

Section 3. Standards

The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to its policyholders, creditors or the general public. The commissioner may consider:

- A. Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;
- B. The National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;
- C. Whether t

Model Regulation to Define Standards and Commissioner's Authority for Companies
Deemed to be in Hazardous Financial Condition

- D. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- E. Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- F. Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- G. Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the commissioner may affect the solvency of the insurer;
- H. Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;
- I. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;
- J. The age and collectability of receivables;
- K. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;
- L. Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- M. Whether the insurer has failed to meet financial and holding company filing requirements in the

- (6) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;
- (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
- (8) Document the adequacy of premium rates in relation to the risks insured;
- (9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner.
- (10) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner.
- (11) Provide a business plan to the commissioner in order to continue to transact business in the state.
- (12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

- C. An insurer subject to an order under Subsection B may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to [cite the applicable rules of civil or administrative procedure]. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in [insert proper county] county or in some other place convenient to the parties designated by the commissioner. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

Section 5. Judicial Review

Any order or decision of the commissioner shall be subject to review in accordance with [cite applicable provision of the state administrative code] at the instance of any party to the proceedings whose interests are substantially affected.

Note: Consideration should be given to the practice and procedure in each state.

Section 6. Separability

If any provisions of this regulation be held invalid, the remainder shall not be affected.

Section 7.

—